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**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

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In the Matter of Investigation into  
US West Communications, Inc.'s  
Compliance with Certain Wholesale  
Pricing Requirements for Unbundled  
Network Elements and Resale  
Discounts

Docket No: T-00000A-00-0194

**WORLDCOM'S EXCEPTIONS TO  
RECOMMENDED OPINION AND ORDER**

The Arizona Corporation Commission ("Commission") decision in this docket will have a significant impact on whether a competitive local exchange market ever develops and flourishes in Arizona. The prices that Qwest is allowed to charge its competitors for interconnection and unbundled network elements can either encourage competition or restrict, and even eliminate, competition. For this reason, WorldCom, Inc., on behalf of its operating companies ("WorldCom"), has actively participated in this docket and files these Exceptions to the Recommended Opinion and Order ("RO"). The RO adopts a substantial number of cost based prices that will encourage competition. In a few instances, WorldCom respectfully disagrees with the prices adopted by the RO. In addition, certain

1 issues are not discussed in the RO and should be addressed in a supplemental order.

2 WorldCom's Exceptions will focus on collocation and information services, but

3 WorldCom supports the Exceptions set filed by AT&T, XO and Time Warner Telecom of  
4 Arizona.

5  
6 **I. INTRODUCTION**

7 With respect to collocation, WorldCom takes exception to the following aspects of  
8 the RO:

9  
10 1. The floor space rental costs, while reduced in the RO, are not reduced  
11 sufficiently to exclude Qwest's excessive cost factors and the artificially increased extra  
12 space calculations.

13 2. The RO adopts power charges that are substantially higher than Qwest's  
14 FCC charges for Arizona or the charges of other ILECs.

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16 3. The RO discusses, but does not resolve, the dispute over power cable  
17 lengths.

18 4. The RO includes excessive cable racking costs due to an inaccurate  
19 assumption about shared racking.

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21 5. The adjustment made to CLEC-to-CLEC interconnection in the RO should  
22 also be made to the line sharing engineering costs.

23 6. The RO failed to adopt WorldCom's proposal for a five year, recurring cost  
24 structure that is a good compromise of the CLECs and Qwest's interests with respect to  
25 non-recurring vs. recurring charges.  
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1           7.     The RO does not exclude the double counting of HVAC and electrical costs  
2 in the collocation space construction charge.

3           8.     The RO does not adjust the power and land and building factors applied to  
4 cable racking and other investments, even though such factors are already embedded in the  
5 collocation costs because collocators are charged directly for power and space rental.  
6

7           9.     The RO apparently accepts numerous ICB charges proposed by Qwest that  
8 are hidden and not supported by cost studies. Such charges can artificially increase the  
9 collocators costs by forcing CLECs to delay business plans while they challenge such ICB  
10 charges on a case-by-case basis.  
11

12           With respect to information services and databases, WorldCom takes exception to  
13 the RO in the following respects:  
14

15           1.     The RO does not address various information service and database elements  
16 for which Qwest proposes market pricing. Such market pricing was never substantiated by  
17 Qwest through cost studies and, in fact, Qwest took the position that the Commission does  
18 not have jurisdiction to review these prices. In addition, there was not evidence that these  
19 market prices are imputed by Qwest; therefore, such prices are discriminatory.  
20

21           2.     The RO does not address directory assistance listing ("DAL") information  
22 prices that are substantially above prices adopted in Texas and New York and for which  
23 Qwest offered no explanation or support.  
24

25           3.     The RO does not address Qwest's refusal to price ICNAM service on a  
26 "batch" basis.

1 **II. COLLOCATION**

2 **A. Introduction**

3 Collocation is the means by which CLECs place telecommunications equipment in  
4 a space in order to acquire access to Qwest's unbundled network elements or to  
5 interconnect with Qwest's network. This "space" usually is within Qwest's central office.  
6 The CLEC pays Qwest for the use of the space. A fundamental aspect of collocation is  
7 that Qwest controls the placement of the collocator's equipment in the central office. As a  
8 result, Qwest reserves almost total control over the cost its competitors pay for collocation.  
9 With no incentive to minimize collocators' costs, there is no assurance that Qwest will  
10 follow a "best practices" approach to space planning. In fact, Qwest typically elects to  
11 place all collocators in one area of the central office, even if that area requires demolition  
12 and reconstruction to "prepare" the space, and even if that space results in longer cabling  
13 and more cable racking to connect CLEC equipment than would be the case if Qwest were  
14 installing equipment for itself.  
15

16 **B. Floor Space Rental Costs**

17 The RO reduces Qwest's proposed floor space rental charge by 10% to \$3.56. RO,  
18 p. 40-41 However, this 10% reduction apparently does not take into account the excessive  
19 Qwest cost factors included in the rent cost calculation. WorldCom witness Mr. Lathrop  
20 recommended that the investment portion of the rent cost calculation be reduced by 10%  
21 and that the cost factors used by AT&T in calculating the rent space be used resulting in a  
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1 rent cost of \$2.87. WorldCom respectfully requests that the RO be revised to reduce rent  
2 space to \$2.87.

3 The Commission should keep in mind when considering this request the following  
4 two factors.

5 First, this rent is “found” money for Qwest because this central office space cost is  
6 recouped by Qwest whether or not a collocation is present because it is part of Qwest’s  
7 rate base. Transcript, p. 429.<sup>1</sup>

8 Second, in Qwest’s rent study, one factor included is an extra space ratio. Extra  
9 space is needed around the cage enclosure to allow for maintenance and entry into the  
10 cage. In determining the ratio of useable space to “extra” space, Qwest added two  
11 hypothetical models to five actual space allocations in current central offices. The two  
12 “models” had the effect of increasing the rent. Transcript, pp. 437-442; WorldCom  
13 Hearing Exhibit 6. While Qwest claims actual experience is the best indicator of forward  
14 looking costs, Qwest departs from that practice in this case thereby increasing the price to  
15 CLECs. If this unjustified increase is excluded, the CLECs proposed \$2.87 rental cost will  
16 be reduced further.

17 **C. Power Costs**

18 The RO adopts Qwest’s proposed power costs. According to Qwest, its power  
19 usage charges include the cost of purchasing the power from the electric company and the  
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26 <sup>1</sup> “Transcript” refers to the Reporters’ Transcript of Proceedings filed in this docket.

1 cost of the power plant and maintenance to provide power to CLEC equipment. RO, pp.  
2 41-43.

3 Qwest power charges are too high based on comparison to similar charges in other  
4 jurisdictions. Under Qwest's proposal, a collocator would pay \$15.05 or \$18.73 per amp  
5 in addition to the power cable charges, depending on whether the usage was less than 60  
6 amps or greater than 60 amps. *See* WorldCom Hearing Exhibit 1, §8.1.3.

8 On their face, Qwest's power charges are quite high. By way of contrast, Qwest's  
9 FCC power charges range from \$8.70 per amp to \$12.66 per amp in Arizona. In addition,  
10 generally other ILEC power charges are less than \$10.00 per amp. Prefiled Direct  
11 Testimony of Roy Lathrop ("Lathrop Direct"), p. 56. As the RO notes in its discussion of  
12 termination costs, such comparative data can serve as a valid benchmark. RO, pp. 45-47.

14 In addition, Qwest does not provide any information regarding the source of its  
15 power plant investments, which appear to be assembled from a single source. Qwest could  
16 not confirm that it used competitive bidding for power plant components. In sum, Qwest  
17 does not provide sufficient information to be able to determine whether its power  
18 investments are representative of technologically efficient power plants that would be  
19 installed in its Arizona central offices.

22 **D. Power Cabling Costs**

23 The RO appropriately adopts the industry manual pricing for calculating  
24 power cabling costs, including grounding wire. RO, pp. 43-44 The RO also discusses  
25 cable lengths, RO, p. 43, l. 22 through p. 44, but does not decide between the CLEC and  
26

1 Qwest proposed cable lengths. For purposes of calculating power cabling costs,  
2 WorldCom respectfully requests that the Commission adopt WorldCom's proposed cable  
3 lengths, rather than Qwest's cable length. The WorldCom proposal of 70 feet is based on  
4 Qwest's own space rent study.  
5

6 Qwest's power cabling costs estimates are not Arizona specific but are developed  
7 by estimating costs in a sample of five central offices without any demonstration that each  
8 of these central offices represents one-fifth of the central offices in Arizona. Qwest  
9 provided some Arizona specific data on power cable lengths in its rebuttal testimony that it  
10 had refused to provide in discovery, but it has not modified its cost estimates to  
11 incorporate that data. Knowles Direct, p. 2; Knowles Surrebuttal, p. 10.  
12

13 In addition, Qwest's power cable lengths are overstated and inconsistent. Mr.  
14 Fleming indicates the average length in Arizona is 177 feet. Fleming Rebuttal, p. 79. Yet,  
15 in the space rent study, using a typical central office, Qwest only includes 70 feet as the  
16 standard length for cabling. WorldCom Hearing Exhibit 6, Appendix, p.1. This lower  
17 number used in their lease cost study should be used rather than the actual figures  
18 proposed by Mr. Fleming.  
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21 **E. Cable Racking**

22 The RO rejects WorldCom's arguments that Qwest's proposed cable racking  
23 charges are excessive. RO at pp. 46-47. WorldCom respectfully disagrees with that  
24 conclusion.  
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1 Qwest's cable racking costs are excessive. While Qwest and CLECs share virtually  
2 all cable racking in the central office, Qwest assumes that 100% of the caged and 50% of  
3 the cageless collocation arrangements require "major" (new) cable racking aerial support.  
4 The amount of cable racking dedicated to any one collocater would be very small if Qwest  
5 placed CLEC equipment in a manner in which it places its own equipment. If Qwest  
6 places all collocators in a separate space of the central office and does not use pockets of  
7 available space, additional cable racking is required. Lathrop Direct, p. 36.  
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10 It does not appear that Qwest assesses a cable racking cost on virtual collocators.  
11 There is no cable racking dedicated to CLECs in virtual collocation because the cable  
12 racking (and aerial support) is shared with Qwest's adjacent equipment. This same  
13 approach should be used for cageless collocation, since the only difference between virtual  
14 collocation and cageless collocation is equipment ownership. It is possible that a caged  
15 collocation arrangement could have a small amount of dedicated cable racking, but this  
16 would be limited to the amount of cable racking that extends immediately above the last  
17 cage in a line of cages. In sum, no cable racking or aerial support should be used to  
18 develop costs for cageless collocation. For caged collocation, the percentage of jobs  
19 requiring major cable racking and aerial support should be set at 10% and the percentage  
20 of jobs requiring any cable racking and aerial support should be set at 20%. Lathrop  
21 Direct, p. 37.  
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1           **F. CLEC-to-CLEC Connections**

2           The RO recommends a reduction in the CLEC-to-CLEC connection charges (RO,  
3 pp. 47-48). WorldCom supports this reduction, but WorldCom witness Mr. Lathrop  
4 recommended that the engineering charges for CLEC to CLEC interconnection and line  
5 sharing be based on no more than ten hours. Lathrop Direct, pp. 47-48. The RO adopted  
6 Mr. Lathrop's recommendation on CLEC-CLEC interconnection, but did not mention line  
7 sharing. The same adjustment should be made in the line sharing engineering costs.  
8

9           Specifically, in response to a question from Commissioner Spitzer, Ms. Million  
10 modified her recommended number of hours for CLEC-CLEC engineering to be  
11 consistent with Mr. Lathrop's recommendation of ten hours. Ms. Million did not explain  
12 why she did not make a similar recommendation for line sharing engineering, for which  
13 the functions performed (according to Qwest's cost studies) are identical. Mr. Dunkel also  
14 recommended ten hours be used for line sharing engineering.  
15

16           **G. Reusability of Collocation Facilities**

17           The RO rejects WorldCom's recommendation that the space construction charge  
18 for collocation facilities be subject to a recurring cost spread over five years (RO, pp. 48-  
19 49). WorldCom's five year recurring cost proposal should be adopted because it is a fair  
20 and reasonable balancing of CLEC and Qwest financial interests.  
21

22           Qwest failed consistently to separate those investments that would be shared or  
23 reused (and thus recovered in recurring charges) from those investments that would be  
24 dedicated to a specific collocator (and thus recovered through non-recurring charges).  
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1 This primarily appears in Qwest's cage and cageless construction charges. WorldCom  
2 Hearing Exhibit 1, §§8.3.2 and 8.4.2; Lathrop Direct, p. 38. The correct treatment is to  
3 develop a non-recurring charge to recover investments that cannot be shared or reused, and  
4 to develop a recurring rate to recover the investments that can be shared or reused. For  
5 example, the engineering investment should be recovered through a non-recurring charge  
6 since it is assumed that collocation arrangements are engineered one at a time. By  
7 contrast, overhead cable racking is reusable and those investments should be recovered  
8 through recurring charges. Lathrop Direct, p. 50. Qwest just assumed without  
9 investigation that many items in space construction, for instance, cannot be shared by  
10 Qwest. Transcript, pp. 412-413.

13 Qwest's proposal to assess a non-recurring charge for space construction would  
14 result in complete cost recovery each time a new entrant uses a cage. To avoid this  
15 multiple cost recovery, the correct approach is to develop a recurring charge assessed over  
16 the life of the asset using an occupancy factor to recognize the possibility that the cage  
17 may be unused for some portion of the cost recovery period. While this raises costs for  
18 collocators, it provides Qwest with the opportunity to "overcollect" should the actual  
19 occupancy exceed the occupancy factor used to develop the recurring charge. Lathrop  
20 Direct, p. 51.

23 To minimize dispute over the uncertainty associated with utilization over time, the  
24 Commission should use a recurring cost spread over a period of five years. This shorter  
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1 period will balance the risk CLECs face (collectively) for potential cost over-recovery and  
2 the risk Qwest faces for potential cost under-recovery. Lathrop Direct, p. 51.

3  
4 **H. Space Construction**

5 The RO appropriately reduces several elements of Qwest's proposed space  
6 construction charge, including fencing costs, engineering costs and power and grounding  
7 cable costs. The RO, however, does not address the double counting issue.

8 The space construction charge contains HVAC and electrical costs that are also  
9 included in the floor space rent. Transcript, pp. 421-422, Lathrop Direct, pp. 51-52.

10 Qwest witness Mr. Fleming claims that Qwest's floor space rent includes only  
11 "centralized system" costs while "distribution facilities" costs are included in Qwest's  
12 space construction charge. The centralized system serves all users of the central office  
13 while the distribution facilities are the specific electrical and mechanical facilities  
14 connecting the central system to the collocation space. This structure does not match  
15 Qwest's rent cost study that included 70 feet of delivery or distribution line costs for  
16 electrical and mechanical facilities in its rent calculation. See WorldCom Hearing Exhibit  
17 6, Appendix, p.1. Mr. Fleming suggests that Qwest removed all "distribution facilities"  
18 from its rent costs, but Qwest's rent cost study clearly includes HVAC and electrical  
19 distribution costs for facilities that connect directly to the collocation space. Qwest could  
20 not explain away this double counting except to say that it is adjusted "someplace else."  
21 Transcript, pp. 432-437. It appears that the same distribution facilities included in the rent  
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1 cost also are included in the space construction costs. As a result, the collocation space  
2 construction charge should be further reduced to eliminate this double counting.

3  
4 **I. Double Recovery of Power and Land and Building Cost**

5 The RO makes no mention of WorldCom's argument that Qwest double recovers  
6 power, land and building costs.

7 Qwest applies power and land and building factors to cable racking and other  
8 investments. Qwest applies these factors generally as a means to spread the cost of a  
9 central office power plant and the land and building investments over its various services.  
10 Collocation service, however, is different from other services in that collocators already  
11 pay directly for power and space rental. Other collocation elements, therefore, should not  
12 include land and building investment. Thus, Qwest should not apply power or land or  
13 building factors to any collocation related investments. To do otherwise would permit  
14 Qwest to "over recover" its power and land and building cost. Lathrop Direct, p. 40.  
15 Qwest witness Ms. Gude fails to explain why collocators, who also pay directly for power  
16 and land and building, should pay more for facilities, like overhead cable racking, that use  
17 no power or floor space. Lathrop Surrebuttal, p. 4; Transcript, pp. 967-971. WorldCom  
18 respectfully requests that all power, land and building cost factors be eliminated from  
19 collocation rates.  
20  
21  
22

23 **J. Individual Case Basis ("ICB") Pricing**

24 The RO makes no mention of WorldCom's concern with ICB pricing and,  
25 apparently, accepts the numerous ICB prices proposed by Qwest.  
26

1 Qwest lists numerous ICB charges including adjacent collocation and central office  
2 security infrastructure. Such ICB charges should not be allowed because they are hidden  
3 and are not supported by cost studies. Lathrop Direct, p. 32. In particular, Qwest should  
4 be required to provide cost studies for adjacent collocation. Qwest could not dispute that  
5 Verizon has provided cost studies for adjacent collocation. Transcript, p. 311.

7 ICBs also are problematic because they are quantified only on submission of a  
8 collocation request and thus the collocator has no idea what the cost of collocation will be.  
9 When a CLEC has a business need for a specific collocation space, it is in a vulnerable  
10 negotiating position. Qwest can use this leverage to artificially increase the collocator's  
11 cost by forcing CLECs to delay their business plans while challenging such ICB charges.  
12 Furthermore, charges that simply reimburse Qwest for the time and materials on an ICB  
13 basis, provide no incentive for Qwest to pursue efficiencies and improve collocation  
14 implementation processes. Lathrop Direct, p. 34. Qwest could not guarantee that ICB  
15 prices will be TELRIC-based and non-discriminatory and acknowledged that the CLEC  
16 would have to resort to the dispute resolution process to challenge an ICB. Transcript, pp.  
17 305-307.

21 With respect to security costs, the FCC has precluded Qwest from imposing more  
22 stringent security measures on CLECs than Qwest imposes on its own employees and  
23 contractors. Before being permitted to assess any ICB charge, Qwest should be required  
24 to prove it has met the FCC standard for imposing security costs. Lathrop Direct, p. 33.  
25 The amount of any such security charge should be borne on a *pro rata* basis, using square  
26

1 footage as an allocation. This approach ensures that Qwest has the economic incentive to  
2 minimize the costs that arise from the measure it selects. Lathrop Direct, p. 62; *see also*  
3 Transcript, p. 301.

### 4 5 **III. INFORMATION SERVICES AND DATA BASES**

6 The RO discusses operator services/directory assistance and custom routing issues  
7 at pages 58 through 60. Unfortunately, the RO does not address several issues of concern  
8 to WorldCom that were presented at the hearing: specifically, market pricing, directory  
9 assistance listing ("DAL") information and ICNAM batch pricing.

#### 10 11 **A. Market Pricing**

12 Qwest proposes unsubstantiated, discriminatory market pricing for numerous  
13 information services and database elements. Qwest admits that it does not provide any  
14 cost studies to support these market-based prices and concedes that a "profit" factor is  
15 somehow included. Transcript, pp. 565, 572-573 and 688-689. In fact, no Qwest witness  
16 could explain the basis for Qwest's proposed market prices. More remarkably, Qwest  
17 witnesses took the position that the Commission does not need to approve these rates and  
18 that they were being provided merely as a courtesy. Transcript, p. 688. This position is in  
19 stark contrast to Qwest's position in the recent retail rate case settlement in which  
20 wholesale prices were put into basket 2 and the Commission was told it did not need to  
21 consider basket 2 in establishing retail rates because basket 2 would be reviewed by the  
22 Commission in separate proceedings. Transcript, p. 689; *see also* A.C.C. Decision No.  
23 63487, p. 5, ll. 21-26. In fact, Qwest argues in a filing in the Arizona §271 proceeding that  
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1 wholesale rates are subject to review by state commissions and must comply with §252 of  
2 the Act. *See* Qwest Corporation's Legal Brief on Impasse Issues Relating to General  
3 Terms and Conditions, pp. 5-6, attached at Tab A. Of equal importance, there is no  
4 assurance based on this record that these market prices are not discriminatory. In response  
5 to questions, Qwest's witnesses could not confirm that these market prices are imputed by  
6 Qwest. Transcript, pp. 574. The Commission should strike all market-based pricing in  
7 this docket until Qwest provides cost studies for review as well as evidence that these  
8 proposed prices are imputed and not discriminatory.  
9

11 **B. Directory Assistance Listing ("DAL") Information**

12 Qwest must provide DAL information at cost-based, non-discriminatory rates.  
13 DAL information is the underlying customer listing information that constitutes the  
14 directory assistance database. It is not the same as DA/OS service which is the service  
15 related to assisting callers in finding a customer's listing or completing a call. Although  
16 the FCC reclassified DA/OS service as UNE only in the absence of customized routing,  
17 the FCC identified the DAL database as a call related database. Prefiled Direct Testimony  
18 of Edward Caputo. ("Caputo Direct") p. 8.  
19

21 Furthermore, even if the DAL database is no longer considered a UNE by the FCC,  
22 there is nothing to prevent the State of Arizona from declaring it as such under §251 of the  
23 federal Telecommunications Act (the "Act").  
24

25 Qwest remains the only reliable source for DAL information and without such data  
26 WorldCom is put at a direct competitive disadvantage. Caputo Direct, p. 9. Because

1 Qwest remains the largest presence in the local market by virtue of its incumbency and  
2 gleans its DAL information directly from the customer service order process, it alone has  
3 direct access to the most accurate DAL database in the market. Caputo Direct, p. 9.  
4 Accordingly, Qwest should offer the DAL database at non-discriminatory, TELRIC-based  
5 prices to other carriers.  
6

7 DAL also is subject to the Act's non-discriminatory provisions regarding dialing  
8 parity pursuant to §251(b)(3) of the Act. The FCC encouraged states to set their own rates  
9 consistent with the non-discriminatory and reasonable requirements of dialing parity. See  
10 DAL Provisioning Order, p. 38.<sup>2</sup> In doing so, the FCC specifically recognized that state  
11 imposed rates based on cost-based models utilizing valid cost studies were consistent with  
12 dialing parity.  
13

14 Qwest prices must not only reflect what it charges other carriers, but non-  
15 discriminatory pricing must also be relative to what Qwest charges itself. The  
16 Commission should ensure that meaningful competition in the directory assistance  
17 marketplace exists so that new and innovative directory assistance services are fostered.  
18

19 Qwest's proposed market rate of 2.5¢ per initial listing for each update is without  
20 cost basis. See WorldCom Hearing Exhibit 1 at §10.5.1. In fact, the cost of the data is 25  
21 times less than Qwest's price. Caputo Direct, p. 11. Such inflated prices threaten to  
22  
23  
24

25 <sup>2</sup> *Provision of Directory Listing Information under the Telecommunications Act of 1934,*  
26 *As Amended, CC-Docket No. 99-273, FCC 01-27, released January 23, 2001 (DAL Provisioning Order).*



1 barricade any meaningful competition in the marketplace, to cause competitors to drop out  
2 of the market and to stifle innovation.

3  
4 There have been two publicly available decisions based on cost studies addressing  
5 the cost of providing DAL data that have set rates in the range of \$0.001 to approximately  
6 \$0.005. These prices were set by the Texas and New York Public Utility Commissions  
7 respectively. Caputo Direct, p. 12. The Texas PUC established a cost-based price and  
8 required Southwestern Bell to provide DAL at those rates to permit all carriers to use them  
9 for both local and interstate purposes. It also should be noted that WorldCom does not  
10 charge any ILEC, including Qwest, for similar listings it provides at the present time.  
11 Caputo Direct, p. 12.

12  
13 Finally, WorldCom objects to Qwests insertion of a transport fee of \$0.001 per  
14 listing. See WorldCom Hearing Exhibit 1, §10.6.5.1. WorldCom already has extended  
15 financial and capital resources to build and maintain its own electronic system, known as  
16 an NDM or "Network Data Mover", for receiving DAL information from Qwest. Asking  
17 WorldCom to pay Qwest to transport the data over WorldCom's own facilities would be  
18 asking WorldCom to pay twice for transport and would unjustly enrich Qwest. Caputo  
19 Direct, p. 13. Qwest could not justify or explain this transport fee. Transcript, pp. 578-  
20 579 and 895-896.

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23 **C. ICNAM**

24 ICNAM should be priced on a "batch" basis. ICNAM service allows CLECs to  
25 query Qwest's ICNAM database in order to secure listed name information associated  
26

1 with a requested telephone number in order to deliver that information to the CLEC's end  
2 users, normally through Caller ID service. Caputo Direct, p. 14. Qwest proposes that  
3 ICNAM be billed on a per query basis.  
4

5 CLECs should be able to obtain the entire contents of the ICNAM database, rather  
6 than be restricted to access on a per query basis. Offering the ICNAM database on a  
7 "batch" basis is technically feasible and will allow access in the same manner used by  
8 Qwest. Caputo Direct, p. 16. On the other hand, limiting access to a per query basis  
9 discriminates against WorldCom and other CLECs by giving Qwest an unfair advantage.  
10 It prevents CLECs from controlling the service quality and management of the database  
11 and restricts WorldCom's ability to offer other service offerings that would enable it to  
12 compete effectively with Qwest in provision of this UNE. Caputo Direct, p. 14.  
13  
14

15 The alternative of purchasing ICNAM on a batch basis is valuable for several  
16 reasons. First, CLECs who operate their own ICNAM database are not restricted to the  
17 exact same service and process method as offered and used by Qwest, thus allowing the  
18 potential for development of innovative services. Second, for some CLECs, the cost of  
19 obtaining the full contents of the database (as a UNE at TELRIC prices) and maintaining  
20 their own database may be more economical than requiring them to pay Qwest on a per  
21 query basis. Providing the alternative of batch data provides potential cost savings to  
22 CLECs. Finally, the CLEC that operates such a database to support services for its own  
23 end users also may develop the capability to offer ICNAM databases to other carriers.  
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1 ICNAM allows the called customer premises equipment, connected to a switching  
2 system via a conventional line, to receive a calling party's name and the date and time of  
3 the call during the first silent interval in the ringing cycle. This is a very limited time  
4 frame within which to determine a name associated with a calling number. If WorldCom  
5 maintains its own database, via global access to Qwest's database, a lengthy step in the  
6 process would be eliminated, allowing WorldCom to provide service at least as good as  
7 Qwest provides for itself. Caputo Direct, pp. 15-16. Further, requiring WorldCom to  
8 "dip" Qwest's database rather than access its own ICNAM database also forces  
9 WorldCom to incur development costs associated with creating a complex routing scheme  
10 within its network. Since Qwest already has its own database, it does not incur the same  
11 cost associated with implementing and maintaining a routing scheme. Caputo Direct, p.  
12 16. Qwest witnesses could not confirm that any ICNAM charges are imputed to Qwest.  
13 Transcript, p. 583. Thus, by enjoying superior access to its ICNAM data, Qwest limits  
14 WorldCom to an inferior service they can provide more efficiently, quickly and cheaply.  
15 For these reasons, WorldCom should have full batch access to the same ICNAM data that  
16 Qwest uses to provide ICNAM services; anything less is discriminatory.

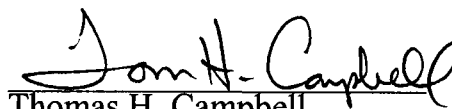
21 The Michigan and Georgia Public Service Commissions ordered the ILEC to allow  
22 full access to the calling name database rather than being restricted to access on a per dip  
23 basis. See Michigan and Georgia Orders at Attachments C and D.  
24  
25  
26

IV. CONCLUSION

WorldCom appreciates the work of the administrative law judges in presiding over the arbitration and preparing the RO. For the most part, WorldCom supports the RO, but believes that there are specific revisions that should be made to the RO as outlined above and in the Exceptions of AT&T and Time Warner Telecom. In addition, a supplemental RO should be issued to resolve outstanding issues.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 2001.

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**WILLIAM A. MUNDELL**  
COMMISSIONER  
**JIM IRVIN**  
COMMISSIONER  
**MARC SPITZER**  
COMMISSIONER

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S LEGAL BRIEF ON IMPASSE ISSUES  
RELATING TO GENERAL TERMS AND CONDITIONS**

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## I. INTRODUCTION

Pursuant to the schedule set by the Commission, Qwest Corporation ("Qwest") submits its Legal Brief on Impasse Issues Relating to General Terms and Conditions contained in its Statement of Generally Available Terms and Conditions ("SGAT"). As set forth below, Qwest's proposals for general terms and conditions to be included in the SGAT are reasonable and well-supported in existing practice and law. Accordingly, the Commission should adopt Qwest's proposals on the general terms and conditions issues that are at impasse.

The parties have had several meaningful opportunities in this proceeding and others to present their views on all of the checklist items identified under section 271 of the Telecommunications Act of 1996 ("Act"). Although the SGAT's general terms and conditions do not involve any specific checklist item under the Act, Qwest has agreed to work with the competitive local exchange carriers ("CLECs") participating in this workshop in an effort to achieve consensus on the general terms and conditions.

Qwest appreciates that general terms and conditions play a role in achieving the appropriate balance of risk between the parties to an interconnection agreement. However, as set forth below and demonstrated in the record here, many of the CLECs' proposals do not achieve an appropriate balance, but rather seek to improperly tip the scales in their favor. In many respects, the proposals of the CLECs represent attempts by strategic competitors to control Qwest's business operations in a manner not required nor ever contemplated by the Act. Qwest has every intention of standing behind the services that it provides under the SGAT and has substantial inducements to do so, including Performance Indicator Definitions ("PIDs"), Quality Performance Assurance Plans ("QPAPs"), and the possibility of the Federal Communications Commission reexamining Qwest's entry into the in-region long distance market under section 272 of the Act.

Qwest's proposed SGAT provisions, many of which incorporate the proposals of AT&T, XO and other CLECs, provide a fair and balanced means of resolving disputes between the parties, amending interconnection agreements, and complying with the Act's pick-and-choose requirements, Qwest proposed provisions not only accommodate future changes in law but significantly accelerate access by CLECs to new services and products offered by Qwest. As evidenced by the redlined version of the "frozen" SGAT filed by Qwest on July 25, 2001, Qwest has made an enormous number of changes, both large and small, in response to the CLECs' comments.

In considering the positions of the parties, it is important to remember what the SGAT is and what it is not. The SGAT is Qwest's standard contract offering, intended to accommodate those CLECs who choose to forego the time and expense associated with negotiating an individual interconnection agreement addressing their individual requirements and CLECs that desire to pick and choose portions of the SGAT into their existing interconnection agreement. Even after the SGAT has been adopted by this Commission, CLECs will remain free to negotiate a specific agreement if they wish, as many of the larger CLECs undoubtedly will do.

As they have in connection with previous workshops, the parties have been extremely successful in narrowing the issues in dispute relating to SGAT general terms and conditions. This brief addresses those relatively few issues that remain open. Qwest's SGAT must be approved if it complies with Sections 251 and 252(d) of the Act and "other requirements of State law."<sup>1</sup> In many instances, Qwest has agreed to modifications that were unnecessary for compliance purposes, but that avoided disputes or promoted the competitive goals of CLECs. Although disputes remain, most of these issues relate to the mechanics of Qwest's SGAT as opposed to its compliance with Section 271 of the Act. Because Section 271 proceedings are not the proper forum to create new requirements under the Act, the Commission should approve

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<sup>1</sup> See 47 U.S.C. § 252(f)(2).

Qwest's language if it comports with the Act, FCC regulations, and applicable state law even if the CLECs favor slightly different wording.<sup>2</sup>

## **II. GENERAL TERMS AND CONDITIONS IMPASSE ISSUES**

### **A. Section 1.7.2 – AT&T's Proposal Regarding "Comparable Rates, Terms and Conditions" Is Unnecessary and Unwarranted and Should Be Rejected.**

During the workshop and after all the testimony had been filed and all the relevant issues had been identified, AT&T proposed, for the first time, section 1.7.2. By this section, AT&T would obligate Qwest to offer new products and services on substantially the same rates, terms and conditions as existing products and services when the new and existing products and services are comparable. AT&T offered section 1.7.2 because it fears that Qwest will unilaterally attach unreasonable rates, terms and conditions to Qwest's new products and services. As part of section 1.7.2, AT&T also tried to create a presumption of comparability, meaning that if a party disputes the similarity between new and existing products and services, Qwest would bear the burden of demonstrating that the products and services are not comparable.<sup>3</sup> The Commission should reject AT&T's proposed provision because it is unnecessary, unwarranted and will only lead to confusion and delay.

#### **1. Proposed Section 1.7.2 Is Unnecessary and Unwarranted.**

Section 1.7.2 is unnecessary and unwarranted for at least three reasons. First, the SGAT already contains sufficient safeguards against Qwest's imposition of unreasonable rates, terms and conditions on new products and services. Second, this Commission will insure that any

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<sup>2</sup> See Memorandum Opinion and Order, *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Dkt. No. 00-65, FCC 00-238 ¶¶ 22-26 (June 30, 2000) ("SBC Texas Order").

<sup>3</sup> See *id.* at 37.



rates, terms and conditions offered by Qwest are reasonable. Third, Qwest has the right to establish contractual rates, terms, and conditions for its products.

**a. The SGAT Already Contains Sufficient Safeguards Against Unreasonable Rates, Terms and Conditions On New Products and Services.**

The SGAT already protects CLECs from unreasonable rates, terms and conditions on new products and services in at least two ways. First, section 5.1.6 protects CLECs by reaffirming Qwest's obligation to price new products and services in accordance with all applicable laws and regulations. Section 5.1.6 states in relevant part:

All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.

By this provision, Qwest contractually obligated itself to offer new products and services in a manner that is reasonable and consistent with the law. Moreover, section 252(f)(2) of the Act requires that all SGAT rates comport with section 252(d) of the Act – the TELRIC and resale discount provisions. AT&T's section 1.7.2 is unnecessary and redundant. Qwest has already committed to offer its new products and services under reasonable rates, terms and conditions.

Second, in the SGAT Qwest commits to maintain the CICMP process, which protects CLECs by allowing them to offer input and make suggestions on Qwest's new product offerings.<sup>4</sup> Under CICMP, Qwest will notify the CLECs of all new products before it formally

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<sup>4</sup> See SGAT § 12.2.6. All references to the "SGAT" are to the SGAT "lite" attached as Exhibit A hereto and filed contemporaneously with this brief. Qwest notes that minor language changes may be appropriate to the SGAT lite to incorporate all of the agreements reached by the parties. Qwest will consult with CLECs on such changes and will incorporate them in a revised SGAT lite to be filed within the next few days. Specifically, Qwest believes that the parties are likely in agreement over SGAT language governing Revenue Protection (section 11.34) and Term of Agreement (section 5.2). Because of disrupted schedules during the past week, however, Qwest has been unable to confirm the language at

introduces them in the market.<sup>5</sup> CLECs will then be able to review and comment on the new products and raise any concerns.<sup>6</sup> If CLECs are concerned about the rates, terms or conditions of a new product, they may work with Qwest to resolve the issues. CLECs will not be caught off guard or surprised by any of the rates, terms and conditions and will have ample opportunity to dispute what they believe is inappropriate or unreasonable. The CLECs' active participation in a process in which Qwest's new product offerings are described and discussed insures that Qwest will not unilaterally attach unreasonable rates, terms and conditions to its new products and services.

**b. This Commission Will Insure That Any Rates, Terms and Conditions Offered By Qwest Are Reasonable.**

Section 1.7.2 is also unnecessary because Qwest's rates are subject to review and oversight by each individual state commission. Section 252(f)(2) of the Act mandates that commissions cannot approve an SGAT unless they specifically find that SGAT rates comply with section 252(d). Because Qwest's rates for its products and services are heavily regulated (here, specifically regulated) and subject to cost dockets, there is little chance that Qwest can

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issue and to incorporate it into the SGAT lite. Again, Qwest will confirm agreement concerning this language and will file a revised SGAT lite within the next week.

<sup>5</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 38. Citations to "Tr." are to the transcripts of general terms and conditions workshop proceedings held in this docket as well as those held in Arizona on June 11-15, 2001, the Multi-State collaborative proceeding on June 25-28, 2001, and Washington on July 9-10, 2001. Because of the substantial overlap between the issues here and these other general terms and conditions proceedings, and because of the evolving nature of the issues actually in dispute, the parties agreed to "import" into the record here the records developed (transcripts and exhibits) in those workshops. See, e.g., Colorado Transcript ("CO Tr.") (8/21/01) at 105-107 (noting parties' agreement regarding record importation). Consistent with this agreement, on August 27, 2001, Qwest filed its Notice of Filing of Transcripts and Exhibits from the Colorado Workshop Regarding General Terms and Conditions. The Notice includes the exhibit numbers assigned the materials in Colorado, and Qwest used those numbers in identifying them in this brief. Finally, because the Washington proceeding is the most recent of these proceedings and, therefore, explored the most recent iteration of the parties' positions, citations to prefiled testimony is to that filed in Washington.

<sup>6</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 38.

successfully impose unreasonable rates. If Qwest attempts to charge excessive amounts for its new products, this Commission would surely order Qwest to adjust its rates.

**2. Proposed Section 1.7.2 Promotes Confusion and Delay.**

Section 1.7.2 promotes confusion and delay because it employs vague terms that are subject to multiple interpretations and adds an unnecessary layer of analysis in resolving new product disputes. Nowhere in section 1.7.2 does AT&T define the terms "comparable products and services" or "substantially the same rates, terms and conditions." Because these terms are not defined, the parties will undoubtedly dispute what is "comparable" and what is "substantially the same," thus leading to lengthy dispute resolution proceedings and delayed product offerings. Rather than promote efficiency, section 1.7.2 will only cause unnecessary delay.

Furthermore, section 1.7.2 adds an unnecessary layer of analysis in resolving disputes over the proper rates, terms and conditions. Instead of focusing on what the rates should be, section 1.7.2 focuses on whether there are comparable products. According to section 1.7.2, whenever the parties dispute the reasonableness of Qwest's rates, terms and conditions, the first inquiry is whether the new product is comparable to an existing product. Regardless of whether the products are comparable, the second inquiry examines the appropriateness of the rates, terms and conditions. For example, if the products are comparable, the parties must examine whether the rates, terms and conditions are substantially similar. If the products are not comparable, the parties must examine whether the rates, terms and conditions are appropriate and reasonable. This two-step approach is completely unnecessary. Rather than examine whether the products are comparable, the parties should consider the appropriateness of the rates, terms and conditions in the first instance. There is no reason to add another potential point of dispute when the heart of the issue can be addressed directly.